

1 A Yes.

2 Q Have you ever received any money for it?

3 A Yes.

4 Q Who paid it?

5 A Be IPC.

6 Q Has anybody else ever paid you anything in
7 connection with EMBLEM.exe?

8 A Not that I can recall.

9 Q Not that you can recall?

10 A Not that I can recall.

11 Q And your other answers are the same as for
12 the other software that IPC paid you something for?

13 A Pretty much except for the few exceptions I
14 pointed out like with DUPLO --

15 Q I'm asking about for EMBLEM specifically,
16 the answers would be --

17 A But DUPLO was also IPC but it had
18 exceptions.

19 Q Okay.

20 A And there were a couple others like that
21 too.

22 Q Okay. So let's move on to the next page
23 here. Number 21, freight control system. I take it
24 you're the author?

25 A Yes.

1 Q And you have received money for -- in
2 connection with freight control system from Y. Hata?

3 A No.

4 Q No?

5 A No.

6 Q Have you -- and that's because this is the
7 old software, the 1993 software, correct?

8 A Yes.

9 Q And you have written a different program
10 that's actually used by Y. Hata, right?

11 A Yes.

12 Q So have you ever received any funds in
13 connection with this item that is registered as
14 number 21?

15 A I guess the HEX settlement would fall into
16 that.

17 Q Anything else?

18 A That I can recall --

19 MR. HOGAN: I'm going to object vague as to
20 what received means, whether it means received a
21 judgment, I guess, a local infringer --

22 Q (By Mr. Smith) Fair enough. We can
23 certainly leave out -- I'm not trying to trick you
24 regarding your litigation. I'm only asking whether
25 you received any payments.

1 So have you ever been able to -- have you
2 ever received any money from anyone other than the
3 HEX settlement in connection with freight control
4 system registration TX579445?

5 A I don't think so.

6 Q Same question for number 22, Prepaid vendor
7 invoice for Crystal reports.

8 A Same thing. Anything related to FCS 1993, I
9 think the only money that's ever been paid in
10 connection with them related to the HEX settlement.

11 Q 23, FCS1993 SQL export queries used to
12 export and translate freight control system data,
13 database structure and data organization to text,
14 CVS, XLS and MDB file formats. Are you the author?

15 A Yes.

16 Q Have you ever received any money for this?

17 A Again, as I stated before, only tangentially
18 with the collection from HEX if we can -- if that's
19 considered to be applied towards us.

20 Q Okay. Number 24, FCS1993, terminal
21 reporting system, version 1.0 Have you ever received
22 any money from that?

23 A Only in relation to HEX as we talked about
24 before.

25 Q Okay. So all of these have nothing to do

1 with Y. Hata, is that right?

2 A That's correct.

3 Q And --

4 A You say "all of these". Just up to that
5 point or further on --

6 Q Everything through number 24.

7 A No. I said I pulled that one little piece
8 out.

9 Q You did say FlemingP0?

10 A Yeah. There was a little piece that I
11 pulled out of there.

12 Q All of these other than FlemingP0 through
13 number 24 are unrelated to what's being used at Y.
14 Hata, right?

15 A Yes.

16 Q Have you -- number 25, crystal -- FCS1993,
17 crystal report, pallet tags, version 1.0. Are you
18 the author?

19 A Yes.

20 Q Have you ever received any money from its
21 use?

22 A Only the tangential payment from HEX.

23 Q And again, that has nothing to do with Y.
24 Hata?

25 A No.

1 Q Number 26, FCS1991, crystal report,
2 receiving report, version 1.0. Have you ever
3 received any money from that?

4 A Only related to HEX.

5 Q 27, FCS1991, crystal report, profitability
6 report, version 1.0. Have you ever received any
7 money for that?

8 A Only related to HEX.

9 Q And there's nothing derived from these
10 running at Y. Hata today?

11 A No.

12 Q Number 28, FCS1993, EDI 875 PO database
13 program, version 1.0. Are you the author?

14 A Yes.

15 Q Have you ever received any money from
16 creating that?

17 A Only related to the loss license fee
18 recovery from HEX or the settlement or how you want
19 to characterize it.

20 Q Number 29, FCS1993 container inventory
21 database program, version 1.0. Are you the author?

22 A Yes.

23 Q The date for number 29 as well as number 28
24 that it was created says 2993. Is that the correct
25 date?

1 A I don't think so.

2 Q What is the correct date?

3 A I don't know. I'd have to look at the
4 certificate.

5 Q You don't know when you authored this
6 program?

7 A Not off the top of my head. It was sometime
8 in the late 1990s.

9 Q Okay. Other than the settlement with HEX,
10 is it true that you never received any money for it?

11 A That's true.

12 Q Anybody ever offered you any money for it?

13 A I guess you do from time to time but --

14 Q Other than settlement offers?

15 A Oh --

16 Q In the litigation, has anybody ever offered
17 you anything?

18 MR. HOGAN: Ones that they actually mean --

19 THE WITNESS: No.

20 Q (By Mr. Smith) Other than for everything
21 we've talked about up to number 29, has anybody ever
22 offered you any money for it other than settlement
23 offers in litigation?

24 A Yeah. We talked about some exceptions in
25 there.

1 Q So you remind me what --

2 A Yeah. There were somewhere like the DUPRO
3 as an example.

4 Q Where you've actually used it with Y. Hata?

5 A Well, sure. And a lot of times when
6 programs design something new, that's one of the
7 reasons you register it because you're allowed to
8 take to make derivatives on some, you know.

9 Q For all of the ones where you said you
10 don't -- you haven't received any money, has anyone
11 offered you money that you didn't accept in
12 connection with any of the programs that we talked
13 about up to now through number 29 and again excluding
14 settlement offers?

15 MR. HOGAN: You're not talking about a jury
16 offering money? This is excluding judgments?

17 Q (By Mr. Smith) Outside of the litigation.

18 A I think in just a -- I think in just a
19 business sense, if that's what you mean, I think the
20 answer would be yes. Do I know who they are? No.
21 But my sense says it's yes.

22 Q So you don't know who has made you such an
23 offer or how much they offered for any of the
24 programs that we've talked about up to now except
25 FlemingPO which is part of the Y. Hata package or a

1 derivative of it?

2 A No. There have been situations over the
3 years where people have asked to take something that
4 already existed.

5 Q Okay. And those would be among the first 29
6 programs that we've talked about here?

7 A Yes. Even if people didn't enunciate it by
8 specifically what program it was, it was implied in
9 general discussions.

10 Q And is it correct that you're not able to
11 identify any of those people who --

12 A I can't remember.

13 Q And is it correct that you're not able to
14 say how much they offered?

15 A No. Not specifically, no.

16 Q You able to say generally how much was
17 offered?

18 A No.

19 Q Number 30, FCS1993 crystal report, daily
20 transportation schedule, version 1.0. You're the
21 author?

22 A Yes.

23 Q Other than the HEX settlement, have you ever
24 been paid anything for it?

25 A No.

1 Q Other than the HEX settlement, have you ever
2 been offered anything for it?

3 A I may have been. I don't recall.

4 Q Number 31, FCS1993 crystal report, sailing
5 chart, version 1.0. You're the author?

6 A Yes.

7 Q Other than the HEX settlement, have you ever
8 been paid anything for it?

9 A No.

10 Q Other than the HEX settlement, have you ever
11 been offered anything for it?

12 A I may have been. No, I haven't been paid
13 anything. I may have been offered something but.

14 Q But you're not able to say by whom?

15 A No.

16 Q And you're not able to say how much was
17 offered?

18 A No.

19 MR. HOGAN: I'll state for the record that
20 his agent was offered -- Jamie Sprayregen offered
21 money in Delaware --

22 MR. SMITH: Okay. I assume that was
23 probably in the context of litigation and I am
24 excluding any settlement offers.

25 Q (By Mr. Smith) Number 32, FCS1993, crystal

1 report, trucking FTL, version 1.0. You're the
2 author?

3 A Yes.

4 Q Have you ever been paid anything for it
5 other than the HEX settlement?

6 A No.

7 Q Have you ever been offered anything for it
8 other than the HEX settlement?

9 A Again, it falls into that category when
10 you're talking about freight systems. People talk
11 about what was and what is or something new, yeah, so
12 I probably was.

13 Q You're not able to say who made you an offer
14 for it?

15 A No.

16 Q And you're not able to say how much the
17 offer was?

18 A No.

19 Q And you -- whatever the offer was, you
20 didn't accept it, correct?

21 A Correct.

22 Q 33, FCS1993 crystal report, trucking LTL,
23 version 1.0. Are you the author?

24 A Yes.

25 Q Other than the HEX settlement, have you ever

1 been paid anything for it?

2 A No.

3 Q Other than the HEX settlement, have you ever
4 been offered anything for it?

5 A Same as the answer to the previous one, 32.

6 Q And if I understood your answer correctly,
7 you may have been offered something but you don't
8 know from whom and you don't know how much?

9 A Right.

10 Q Number 34, FCS1993, crystal report, load
11 plan, version 1.0. You're the author?

12 A Yes.

13 Q Other than the HEX settlement, have you ever
14 been paid anything for it?

15 A No.

16 Q Other than the HEX settlement, have you ever
17 been offered anything for it?

18 A Again, be the same as the previous answers.

19 Q Which is it's possible but --

20 A It's possible in the context of business
21 negotiations people comparing old to current doing
22 something.

23 Q It's possible but you don't know who would
24 have made the offer or how much they would have
25 offered, correct? Sorry --

1 A Yes. I'm sorry.

2 Q The answer is yes. Okay.

3 35. Is your answer the same? You're the
4 author, you've never been offered anything for it
5 except in the HEX settlement and you've never been
6 offered anything from anybody else that you can
7 recall as you sit here today?

8 A Correct.

9 Q Is the same true for number 36?

10 A Correct.

11 Q Is the same true for number 37?

12 A Yes.

13 Q Have you submitted anything to the United
14 States Copyright Office other than the 37 items
15 listed on Exhibit E?

16 A I think so.

17 Q What else?

18 A I don't recall.

19 Q Well, you named one thing today when you
20 said you had sent the copyright office a copy of the
21 document that you call Second Addendum, right?

22 A I think so.

23 Q What else?

24 A As I say, I don't recall. And I'm not sure
25 if I actually sent that or if it's waiting to be

1 sent. But it is packaged up to go. But there has
2 been communication regarding it as to how to file it.

3 Q Okay.

4 A I might have a copy of it. I think I did
5 give a copy.

6 Q I take it you considered that document to be
7 an asset of yours?

8 A I'm not sure. I know it's a liability of
9 yours.

10 Q And to whom is that liability owed?

11 A Oh, me.

12 MR. SMITH: Okay. I have a few minutes
13 left. I want to take a quick recess and finish.

14 (Recess taken.)

15 Q (By Mr. Smith) Mr. Berry, you made reference
16 to seeking an annulment. Where has that been filed?

17 A I'm in the process of filing it in Las
18 Vegas.

19 Q Okay. So nothing has been filed to date
20 regarding --

21 A I don't know how that works. You fill out
22 the form and things.

23 Q Are you represented by counsel in that
24 matter?

25 A No.